



American Civil Liberties Union
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Mr. Chairman, Members of the Senate Judiciary Committee,

For the record, I am Scott Crichton, Executive Director of the American Civil Liberties Union of Montana. We are a membership based organization with a 93 year history. We are approaching 2,000 members in Montana, with more than 500,000 members nationwide.

This is my first testimony in what is my 13th session speaking on behalf of ACLU. Over these past 24 years, I've testified on innumerable bills before the Senate Judiciary Committee defending Constitutional Rights and defending the Bill of Rights. On occasion we have stood alone before this committee. On other occasions we have been at the forefront in forming bi-partisan majorities to defend, preserve and protect civil liberties.

We welcome Senator Driscoll's sponsorship of SB 53 and hope that you will be able to embrace the concept presented here in a non-partisan fashion as one small but significant step toward exercising your fiduciary responsibilities and lessening the fiscal impact on the State of Montana and its 56 counties, in both the courts and the jails.

The primary civil liberties issue here is the liberty interest. This year we commemorate the 50th anniversary of a landmark Supreme Court decision known as *Gideon*, the plaintiff in *Gideon vs. Wainwright*.

Panama City, Florida, 1961. Police arrest a drifter, Clarence Gideon, for breaking and entering. Clarence cannot afford a lawyer, so he asks the court to appoint one for him. The judge says the state doesn't have to pay a poor person's legal defense, except for a capital crime. So Clarence has to represent himself. He's convicted. From his prison cell, he submits a petition for his freedom, written in pencil, to the United States Supreme Court.

The Court grants Gideon a new trial, and appoints famous Washington attorney Abe Fortas (and future Supreme Court justice) to represent him. "In our adversary system of criminal justice," writes Justice Hugo Black, "any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth.... Lawyers in criminal courts are necessities, not luxuries... Legal representation is essential to a fair trial. The right of a person charged with crime to counsel may not be deemed fundamental in some countries. But it is in ours."

A jury acquits Gideon and sets him free.



What was established in Gideon was that legal representation is essential to a fair trial. And if someone who is indigent is brought before the court facing the possibility of jail time, they are **entitled** to competent counsel.

In 2002, in a case known as *White v. Martz*, the ACLU, acting on behalf of indigent criminal defendants from seven counties throughout Montana, brought suit alleging widespread unconstitutional deficiencies in the public defender system. A settlement was reached in which the Montana Attorney General agreed to advocate with the ACLU for a statewide indigent defense system. Legislation was passed in 2005 with unanimous support of the Senate and support from nearly 90% of the House establishing such a system. On July 1, 2006 the new public defender system began, under the oversight of the newly established Public Defender Commission.

The Office of Public Defender (OPD) has been chronically underfunded since its inception. Quite simply, SB 53 provides one thoughtful opportunity to take some of the pressure off that system by selecting a handful of non-violent misdemeanor offenses for removing jail terms for first time offenders.

In addition to the impact SB 53 will have on OPD and the Courts, you should also consider the impact it will have on Montana's county jails. Jails, where we hold people **accused** of crimes waiting to be adjudicated or people convicted on misdemeanor offenses for short durations (typically under one year), are intended to be short term facilities. Prisons, where people convicted of crimes and serve longer sentences, are expected in addition to meeting out punishment to provide rehabilitative programming and services. Both are expensive to operate- jails to the county tax payers, prisons to the state tax payers. Both are expected to meet minimum constitutional expectations dealing with safety and health.

The ACLU on occasion has represented inmates regarding conditions of confinement in both jails and prisons, and we will continue to do so when there is deliberate indifference to addressing inadequate safety and health conditions. It is not just in the interests of inmates but is also in the interest of jailers that health and safety conditions are attended to. SB 53 also will help alleviate pressure on county jail overcrowding, a problem which is common to innumerable facilities, urban and rural, across this state.